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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
) CG Docket No. 02-278
Rules and Regulations Implementing)
the Telephone Consumer Protection Act of 1991)

**COMMENTS OF
EMERGENCY COMMUNICATION NETWORK, INC.
ON THE NOTICE OF PROPOSED RULEMAKING**

INTRODUCTION

These Comments are submitted by Emergency Communications Network, Inc. (ECN) of Ormond Beach, Florida. ECN specializes in providing high-speed emergency communication services to governmental agencies, businesses and private individuals through its two flagship services: CodeRed™ and ThunderCall™.

The CodeRed Emergency Telephone Calling System is an extremely high-speed telephone communication service available for emergency notifications. CodeRed employs a one-of-a-kind Internet mapping capability for geographic targeting of calls, coupled with a high speed automated telephone calling system capable of delivering customized prerecorded emergency messages directly to homes and businesses at the rate of up to 50,000 calls per hour. CodeRed subscribers control their emergency broadcasts from anywhere in the world via a secure Internet portal.

ThunderCall is an early warning system designed to deliver severe weather warnings to subscriber's telephones within seconds after warning bulletins are issued by the National Weather Service. ThunderCall subscribers receive recorded message alerts anytime severe weather threatens their local area...24 hours a day, 365 days per year.

Both CodeRed and ThunderCall rely upon a high speed Automated Dialing and Announcing Device (ADAD) network. As such, all of the calls placed by ECN's network must comply with existing Commission regulations regarding the delivery of prerecorded voice messages.

ECN's President Robert Tuttle is an inventor and holds the US patent for delivering non-truncated prerecorded messages to answering devices (US Patent 6,324,262 B1 METHOD AND SYSTEM FOR

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AUTOMATED DELIVERY OF NONTRUNCATED MESSAGES). Additionally, Mr. Tuttle holds several pending patents in the areas of telephony and Internet systems. These Patents have been licensed for use in commercial telemarketing applications. As such, Mr. Tuttle is uniquely qualified to provide comments regarding both the technical and procedural issues related to the utilization and capabilities of ADADs as pertaining the to Commission's regulations under review.

COMMENTS

Re: Random and Sequential Number Generators

Commission's question: We invite comment on the use of random and sequential number generators and whether an autodialer can generate phone calls from database of existing numbers.

Comment: ECN's CodeRed high speed automated dialing system provides several methods of selecting (tagging) telephone numbers to be called. None of these methods involve random or sequential number generation, but instead rely upon the retrieval of the numbers to be called from pre-selected and stored databases of telephone numbers. Those number to be called are chosen from the database via a mapping tool when record selection is based upon specific topographical criteria (i.e. all homes along the banks of a rising river), or by using a query function when searching for all records sharing a common characteristic (i.e. all households within a select ZIP code, or all homes that require special assistance in times of emergency). In all cases the telephone numbers available to be selected for calling are stored within a database of all telephone numbers in the community. Once "tagged" by the selection process, these records are submitted to the CodeRed calling program, which is essentially a high-speed autodialer. ECN's CodeRed system is an example of an autodialer that can generate phone calls from a database of existing numbers.

In addition to the CodeRed system, all of the autodialing systems that license Mr. Tuttle's patented methodology for delivery of non-truncated messages are capable of selecting numbers and placing calls from a database of existing telephone numbers.

Re: Avoiding calls to Emergency Phone Lines

Commission's question: If a particular technology generates numbers at random, how does a telemarketer comply with the law to avoid calling emergency phone lines, health care facilities, pager numbers and wireless telephone numbers? Additionally the Commission asks: Do telemarketers distinguish between wireless and wireline phone numbers and, if so, how?

Comment: Telemarketers who call numbers that are generated at random or sequentially can avoid calling emergency phone lines and health care facilities by maintaining a commercially available database of these telephone numbers and programming their dialing systems to restrict calling these numbers. Telemarketers who utilize databases of numbers for calling can take the same precautions to avoid placing calls to these numbers. Similarly, databases of Cellular, beeper and PCS unique telephone exchanges are available to telemarketers to insure that their calling programs do not include these telephone numbers. For example, ECN purchases from Melissa DATA Corporation "FONE Data" information containing a database of area code and exchanges that are not standard. These include designations for Cellular, Beeper and Miscellaneous/PCS Digital telephone exchanges. ECN uses this information to identify cellular telephones within our calling databases. Information about this particular database may be obtained from the Melissa Data website at the following link: <http://www.melissadata.com/fonedata.html>

Re: Answering Machine Detection:

Commission's question: Is Answering Machine Detection (AMD) responsible for the "dead air" that consumers encounter? Would restrictions on the use of AMD service alleviate the problem of "dead air"?

Comment: AMD is not responsible for the "dead air" that consumers encounter. It appears from this question that the Commission may be confusing AMD technology with the application of AMD technology. AMD technology in its present form has been available since the early 1980s, and has been incorporated into automatic dialing devices used by telemarketers since that time. Virtually all of the hardware used to construct automatic dialing devices incorporates some type of AMD technology which is used to differentiate between calls that connect to a live person and those that connect to answering devices.

For both live and automated telemarketing applications AMD creates great efficiencies by allowing telemarketers to disconnect from calls that reach answering devices. On average 35% to 40% of all first call attempts placed by telemarketers reach an answering device. Without AMD, telemarketers would be forced to connect their live operators to calls that connect to answering devices. This would result in an extraordinary loss of productivity for the telemarketing industry.

For those telemarketers who employ dialing technology with the ability to deliver messages to answering devices, AMD facilitates the delivery of a prerecorded message to those calls reaching answering devices. For example, telemarketers can utilize AMD to leave a message on the answering device of their customer alerting them of the status of their account.

The issue of "dead air" is an issue related to how an individual telemarketer chooses to process a call that AMD indicates has reached a live person. In the Commission's NPRM

it stated *“In the event that a person has answered the telephone and the call is transferred to a sales representative, the use of AMD involves the monitoring of the line for several seconds and may create ‘dead air’ while the call is being transferred”*. This characterization of AMD technology is inaccurate. To clarify, AMD relates to the ability for a calling system to determine the disposition of a call with regards to how the call was answered (either by a live person or by an answering device). Once a call’s disposition has been determined, the auto-dialing software (not AMD technology) will proceed to handle the call in the manner predetermined by the telemarketer, either by playing a prerecorded message, or by transferring the call to a live operator, or by terminating the call.

The problem of “dead air” heard by consumers during the transfer process could be alleviated by requiring such transferred calls to play a prerecorded greeting *prior* to initiating the call transfer to the live operator. The greeting might be scripted as follows: *“Please hold the line to be connected to a live operator from the ABC Company”*. If this type of prerecorded introduction were played to the call recipient prior to the transfer process being initiated, consumers would benefit from 1) knowing that the call was not abandoned and 2) having the choice to terminate the call prior to the live transfer being completed.

Should the Commission choose to require a prerecorded “introduction” to the call transfer the Commission would have to revise the current identification requirements for prerecorded message calls to allow the brief transfer message described above. Current regulations require identification that includes telephone number or address information, which would not be suitable for the introduction message described above. However, since the identification requirements were established to provide consumers an opportunity to contact telemarketers, in this situation the consumer would need only stay on the line to be connected to the telemarketer.

Re: Identification Requirements

Comment: Commission regulations require that a person or entity making a telephone solicitation must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The purpose of such identification is to provide consumers a way to contact the person or entity placing the calls. ECN believes the Commission should expand the regulations to include a provision that the person or entity’s website domain address is an adequate substitute for physical or mailing address information included in the call. This would benefit consumers in several ways. First, communications via a company’s website are practically immediate, as opposed to traditional mail. Second, many organizations have a corporate presence that is exclusively web based (such as “Amazon.com” and “A-child-is-missing.org”). These organizations may be better equipped to take consumer responses via the Internet than via inbound telephone inquiries.

Re: Free Goods and Services

Commission's question: Would it balance the interested of consumers and telemarketers more effectively for us to clarify that calls containing offers for free goods and services are prohibited without the prior express consent of the called party?

Comment: In an attempt to test the ThunderCall Early Warning System, ECN desired to place unsolicited calls to consumers who were in immediate potential danger from tornados. These calls would have warned the consumers of their immediate weather threat and offered consumers the option of continuing to receive additional future calls at no charge for the remainder of our testing period, which would last throughout the remainder of the Spring (violent weather) season. Counsel advised ECN however that such calls might violate the TCPA in that the TCPA was not clear as to whether these commercial calls could be considered solicitations, even though they offered a needed service to consumers free of charge.

In the NPRM the Commission stated that "messages that do not seek to sell a product or service do not tread heavily upon the consumer interests implicated by section 227" (1992 NPRM, 7 FCC Red at 2737). Additionally, if businesses are required to offer goods or services free of charge in order to stay within the compliance parameters of the TCPA, ECN feels this can only benefit consumers who will be the recipients of these free products and services.

The Commission should specifically clarify that calls that do not try to sell something during the call are NOT a threat to consumer's privacy rights and are NOT prohibited by the TCPA.

Re: Calls made Jointly by Nonprofit and For-profit Organizations

Commission's question: We seek comment on calls made jointly by nonprofit and for-profit organizations and whether they should be exempt from the restrictions on telephone solicitations and prerecorded messages. For example, if a non-profit organization calls consumers to sell another company's magazines and receives a portion of the proceeds, should such calls fall within the exemption?

Comment: ECN believes that consumers and non-profit organizations are both served by allowing calls made jointly by nonprofit and for-profit organizations to fall within the current exemptions from the restrictions on telephone solicitations and prerecorded messages. Examples of calls within this category are calls from an affinity credit card organization whereby proceeds from each "charge" would benefit the nonprofit organization. Virtually all Colleges offer such programs, which typically offer a special reduced interest rate to consumers who take advantage of them.

Provided that the call is placed on behalf of the nonprofit organization, and are not merely offers by for-profit firms to make a "donation" to a charitable entity with each sale made, ECN feels that these calls cannot and should not be prohibited by the TCPA.

Re: Revising the definition of "Established Business Relationship"

Commission's question: The Commission concluded that a solicitation to someone with whom a prior business relationship exists does not adversely affect subscriber privacy interests. The Commission defined the term "established business relationship" to mean "a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party." We seek comment on whether any circumstances have developed that would justify revisiting these conclusions.

Comment: ECN believes that a revision of the definition of what constitutes the "termination" of a relationship requires revision so as to better serve the needs of both consumers and businesses. Under the current regulations businesses that offer subscription type services are under a distinct disadvantage over businesses that sell a product or service on a "one time" basis. For example, ECN's ThunderCall Severe Weather Warning Service cannot use automated prerecorded messages to solicit past customers, because the act of canceling (or simply "not renewing") their subscription is deemed to terminate the business relationship. Consider however the consumer who purchases a Ford automobile. Regardless as to whether or not the customer continues to own the automobile, or whether they decide to stop purchasing Ford automobiles in the future and switch to another make of vehicle, it is widely accepted that unless the consumer makes a specific effort to indicate to Ford that they do not want to be contacted again in the future, they are deemed to be a Ford customer forever. Therefore Ford may use prerecorded message technology to communicate with them in the future without restriction based upon a single past purchase.

This existing regulatory language creates a problem for consumers as well. Often times companies are willing to offer better deals to win back past customers than they are willing to offer new customers. For example, if a consumer cancels their credit card because the interest rate they are paying is too high, the credit card company often will offer a lower rate to win back their past customer's business. The same is true of insurance providers as well as newspaper, magazine, CD and book clubs and virtually all subscription based businesses. Since winning these customers back will result in lower revenues to the company (based upon lower charges for services) these subscription-based businesses must utilize the most cost effective communication methods available to them. Prerecorded message technology is typically faster and less expensive than live telemarketing or direct mail marketing. And because the business only needs to communicate the specific "special offer" information to these past customers, and not

detailed information about the basic functioning of the service, automated technology may be the best choice for subscription based businesses that want to reach their past customers before they've had an opportunity to become entrenched with another service provider.

To correct this problem, ECN suggests that the Commission redefined the term "established business relationship" to mean "a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the residential subscriber regarding products or services offered by such person or entity, whereby the *willingness to engage in future communications* has not been previously terminated by either party."

COMMENTS RELATED TO THE NATIONAL DO-NOT-CALL DATABASE

Commission's Question: We seek comment on whether those states that have adopted do-not-call laws should administer those laws to the extent that they apply to intrastate telemarketing calls, while the federal law would govern interstate telemarketing?

Comment: Yes, The FCC should make clear that a national Do-Not-Call list is being contemplated in part because of the states lack of jurisdiction over interstate calls.

Although the federal government alone maintains jurisdiction over interstate telephone calls, this has not kept states from threatening interstate telemarketers with costly litigation if they do not comply with their state laws, such as state do-not-call (DNC) provisions. This has resulted in companies like ECN having to subscribe to each and every state DNC list simply as a matter of avoiding being harassed in every state in which we do business, even though virtually all of our calling is interstate.

Should the FTC (or FCC) establish a National Do-Not-Call database, all interstate calls should fall under the jurisdiction of the FTC (with Federal exemptions) while intrastate calls should fall under the respective state requirements. This seems to be a simple, uncomplicated solution to the problem of "blending" both state and federal databases. ECN's hope is that the FCC will publicly endorse this solution, and in doing so acknowledge publicly the state's limited jurisdiction for enforcing state law upon interstate calls. Implementing this solution would have several positive results:

- 1) It would require telemarketers to deal with only two sets of DNC files and laws: those of the FTC for all interstate calls and those of the state from which the calls originate for calls terminating within that state.

- 2) Considering the proposed costs for obtaining the entire National DNC file as proposed (discussions have revolved around of a maximum fee of \$3,000) the total cost for the entire FTC file and one state file would be a considerable cost savings for

those companies that are currently purchasing all state DNC files. Currently states charge an average of \$400 per year to license their databases. Additionally, some states require either bonding or the utilization of a registered "Service Process Agent" within their state in order to obtain the file, adding thousands of dollars more to the cost of compliance.

Re: Predictive Dialers:

Commission's Question: The widespread use of predictive dialers and answering machine detection technology results in many "hang-up" or "dead air" calls. The FTC indicates that the use of predictive dialers has increased dramatically in the past decade. The FTC notes that many consumers feel frightened, threatened, or harassed when receiving a pattern of such "hang-up" calls. We seek comment on these issues and any other impact that changes in the telemarketing industry over the past decade have had.

Comment: According to the NPRM, in 1991 the Commission received a total of 757 complaints regarding calls placed to subscribers by autodialers. From June 2000 to December 2001 the Commission received over 1,500 inquiries about predictive dialers. This is an increase in the number of annual complaints regarding auto dialers of approximately 32%. ECN wishes to point out however, that during this same 10-year period the FCC estimates that telemarketing calls increased from 18 million calls per day to over 104 million calls per day, an increase of 577%. Additionally, during this 10-year time period under review the use of autodialing devices has proliferated. It can be determined from these statistics that consumer complains to the FCC related to predictive dialers has dropped from one (1) complaint per nine (9) million calls in 1991 to one (1) complaint per thirty eight (38) million calls by 2001. This reduction in the rate of complaints has come in spite of the fact that the volume of telemarketing calls has increased almost six fold while the telemarketing industry's use of predictive and automated dialing devices has soared. If the climate of consumer concern had maintained its 1991 level, by 2001 the number of inquiries regarding autodialers would have been expected to exceed 50,000 annually. With the actual average number of inquiries at approximately 1,000 annually (1,500 over an 18 month period), obviously this issue is not the concern for consumers in 2001 that it was a decade ago.

ECN believes the reason for this reduction of concern is directly related to consumers becoming considerably savvier regarding issues such as "dead air" resulting from the use of automatic and predictive dialers. Consumer use of CallerID service has significantly increased in this time period as well. Although the issue of abandoned calls appeared to be one of significance to consumers in the early 1990's it now appears that consumers have come to understand the limits of CallerID technology and are now using it effectively to avoid unwanted telemarketing calls. Consumers who subscribe to CallerID service understand that calls that do not transmit Caller ID information are most often calls from telemarketers, and therefore consumers are able to avoid these calls entirely.

Below are two examples of how Caller ID services are marketed to consumers. Both examples point out the way that Caller ID is currently useful in helping to identify telemarketing calls:

A telephone company promotion for call waiting uses avoiding telemarketing calls as a major selling point:

Mike is in the middle of an important phone call when he hears his Call Waiting beep. But there is no number displayed on his Caller ID Box. Mike assumes correctly that the call is from a telemarketer so he continues his important conversation. (CC Communications, Caller I.D. w/Call Waiting)

A service from Bell South *Privacy Director* is marketed as a method for protecting customers from unwanted telemarketing calls:

*If you are receiving silent or hang up calls between 8:00 a.m. and 9:00 p.m., it is possible these calls are from telemarketers. Many of these calls will display on Caller ID as UNKNOWN or OUT OF AREA. * * * It is possible for you to receive numerous calls from many different telemarketing sources. For the calls that display on Caller ID as UNKNOWN or OUT OF AREA BellSouth now offers Privacy Director which will assist you with these calls. (BellSouth, Annoyance Call Center)*

Both of these approaches to selling CallerID service make clear that consumers have determined through experience, and with the help of the marketplace, that calls that do not transmit Caller ID information are most likely being placed by telemarketers. It is also important to note that calls that have had CallerID information intentionally blocked (by dialing a *67 prefix or similar method prior to dialing the complete telephone number) display "PRIVATE NUMBER" in the subscriber's CallerID display, as opposed to "UNKNOWN" or "OUT OF AREA" for telemarketing calls that are technically unable to convey this information. In the year 2002 consumers are now keenly aware of this distinction. Because of this growing awareness by consumers, ECN believes that any action to require telemarketers to provide CallerID information, which is currently not technically or economically feasible, would represent an unnecessary burden to the telemarketing industry while offering little benefit to consumers. For the same reasons, ECN feels that changes to the TCPA with regard to specifically addressing the issue of abandoned calls are also now unnecessary.

In some respects the current technological limitations that prevent telemarketers from transmitting CallerID information are working against the telemarketing industry inasmuch as current CallerID technology allows consumers to avoid telemarketing calls entirely. ECN believes that once telemarketers are able to transmit company specific CallerID information along with their calls, consumers will actually be more apt to respond positively to certain solicitations. For example, a consumer who is a customer of Sears, Roebuck and Co. might very well answer a call that displays "SEARS-ROEBUCK" in the CallerID display, whereas they may completely reject the same call if "UNAVAILABLE"

were displayed. ECN believes that once the technology is available to transmit CallerID information the telemarketing industry will embrace and utilize it for these reasons, without any requirement to do so from the government.

Respectfully submitted by

A handwritten signature in black ink, appearing to read "Robert Tuttle". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Robert Tuttle, President
Emergency Communications Network, Inc.
Telephone 1-888-THUNDER
Ormond Beach, FL 32174